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February 24, 2023

Via ECF Filing and E-mail (CronanNYSDCChambers@nysd.uscourts.gov)

The Honorable John P. Cronan
United States District Court
Southern District of New York
500 Pearl Street
Room 1320
New York, NY 10007

RE: *Fischman v. American Airlines, Inc.*
SDNY Docket No. 1:22-cv-08124-JPC
Rule 6(A) Pre-Motion Letter

Dear Judge Cronan,

Pursuant to Your Honor's Individual Rules and Practice in Civil Cases 6(A), this correspondence is submitted by Defendant, American Airlines, Inc.'s ("American") in order to seek approval to file a Fed.R.Civ.P. 56 Motion for Summary Judgment in the above-captioned matter, based upon the fact that the Montreal Convention ("Convention") governs Plaintiff, Joshua Fischman's ("Plaintiff") claims. Plaintiff failed to comply with the Convention's statute of limitations, and he is thus foreclosed from advancing all of his claims, resulting in dismissal of this matter with prejudice.

By way of brief background, this matter is based upon an August 21, 2019 incident whereby Plaintiff alleges that he was struck by a beverage cart during an American flight from New York to Philadelphia. Plaintiff filed his Complaint on August 19, 2022, almost three (3) years to the day after the subject incident's occurrence. American filed its Answer to the Complaint on September 21, 2022. In American's Answer, it set forth, as Affirmative Defenses, averments that Plaintiff's claims may be barred by an applicable statute of limitations, that multinational treaties may apply to his claims, and that American reserves the right to move to dismiss Plaintiff's claims against it.

On February 2, 2023, Plaintiff was deposed in the instant matter. During his deposition, Plaintiff testified that the flight from New York to Philadelphia was the first of four (4) legs of a single, roundtrip, international trip, the ultimate destination of which was Athens, Greece. Plaintiff

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The Honorable John P. Cronan
Fischman v. American Airlines, Inc. (1:22-cv-08124-JPC)
Rule 6(A) Pre-Motion Letter
February 24, 2023

purchased all four (4) flights on the same ticket at the same time. Since the international travel ticket was for travel between two (2) countries, both of which are signatories to the Convention for the Unification of Certain Rules for International Carriage by Air, also known as the Convention, and the subject incident occurred during the course of travel on this ticket, the terms of the Montreal Convention apply and are controlling in the instant matter. Notably, the Convention applies to domestic legs of an international travel ticket. The Convention provides the sole basis under which Plaintiff may recover in the instant matter.

The Convention contains a two (2)-year statute of limitations for all claims. In his Complaint, Plaintiff alleges that all facts pertinent to the instant matter occurred entirely on August 21, 2019. Plaintiff filed his Complaint on August 19, 2022, almost exactly three (3) years after the date of the subject incident, and almost a full year after the expiration of the Convention's statute of limitations. Given same, Plaintiff failed to comply with the terms of the only source of potential recovery in this matter – the Convention – and his claims against American are time-barred. As all of Plaintiff's claims against American are based on the August 21, 2019 incident, and all of these claims are subject to the Convention, Plaintiff's Complaint must be dismissed in its entirety and with prejudice.

Pursuant to Rule 6(A), American suggests the following proposed briefing schedule:

- American's Motion for Summary Judgement: March 3, 2023;
- Plaintiff's Opposition: March 10, 2023;
- American's Reply in Support: March 17, 2023; and
- Plaintiff's Sur-Reply in Opposition: March 24, 2023.

Thank Your Honor for consideration of the foregoing request.

Plaintiff shall respond to the arguments in Defendant's letter by March 3, 2023.

SO ORDERED.

February 24, 2023
New York, New York

Respectfully,

MORGAN & AKINS, PLLC



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JOHN P. CRONAN

NRB United States District Judge

CC: Thomas Mutone, Esq. (via ECF and electronic mail)
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